

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference REP07751WO	FOR FURTHER ACTION See Form PCT/PEA416																									
International application No. PCT/GB2004/000129	International filing date (day/month/year) 12.01.2004	Priority date (day/month/year) 14.01.2003																								
International Patent Classification (IPC) or national classification and IPC A61F2/00, A61B17/00																										
Applicant BARKER, Stephen G. E.																										
<ol style="list-style-type: none"> 1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36. 2. This REPORT consists of a total of 7 sheets, including this cover sheet. 3. This report is also accompanied by ANNEXES, comprising: <ol style="list-style-type: none"> a. <input checked="" type="checkbox"/> sent to the applicant and to the International Bureau) a total of 1 sheets, as follows: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input checked="" type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions). 																										
<ol style="list-style-type: none"> 4. This report contains indications relating to the following items: <table style="width: 100%; border: none;"> <tr> <td style="width: 10%;"><input checked="" type="checkbox"/></td> <td style="width: 15%;">Box No. I</td> <td>Basis of the opinion</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table> 			<input checked="" type="checkbox"/>	Box No. I	Basis of the opinion	<input checked="" type="checkbox"/>	Box No. II	Priority	<input checked="" type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand 16.08.2004	Date of completion of this report 17.05.2005																									
Name and mailing address of the international preliminary examining authority: <div style="display: flex; align-items: center;"> <div> European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465 </div> </div>	Authorized Officer Angeli, M Telephone No. +49 89 2399-7253																									



INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITYInternational application No.
PCT/GB2004/000129

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Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-7 as originally filed

Claims, Numbers

1-17 as originally filed

18-22 received on 16.11.2004 with letter of 15.11.2004

Drawings, Sheets

1/3-3/3 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

4. ☒ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☒ the claims, Nos. 22
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/GB2004/000129

Box No. II Priority

1. ☒ This report has been established as if no priority had been claimed due to the failure to furnish within the prescribed time limit the requested:
☒ copy of the earlier application whose priority has been claimed (Rule 66.7(a)).
☐ translation of the earlier application whose priority has been claimed (Rule 66.7(b)).
2. ☐ This report has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rule 64.1). Thus for the purposes of this report, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:
- ☐ the entire international application,
- ☒ claims Nos. 16,17,22
- because:
- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the said claims Nos. 16,17,22
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
- | | |
|----------------------------|--|
| the written form | <input type="checkbox"/> has not been furnished |
| | <input type="checkbox"/> does not comply with the standard |
| the computer readable form | <input type="checkbox"/> has not been furnished |
| | <input type="checkbox"/> does not comply with the standard |
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/GB2004/000129

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	18-21
	No: Claims	1-15
Inventive step (IS)	Yes: Claims	19
	No: Claims	1-15,18,20,21
Industrial applicability (IA)	Yes: Claims	1-15,18-21
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Re Item V.

- 1 The following documents are referred to in this communication:

D1: US-A-5 397 331

D2: US-A-6 117 159

D3: US-A-5 425 744

- 1.1 The document D4 was not cited in the international search report. A copy of the document is appended hereto:

D4: US-A-5545178

2 INDEPENDENT CLAIM 1

- 2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

Document D1 discloses (the references in parenthesis applying to this document):

An applicator assembly for use in applying a sheet of surgical material through an opening to bridge the remote internal termination of the opening, the assembly comprising:

- a) a deployment sleeve (column 5, lines 47-51);
- b) a plunger for location within the sleeve (column 5, line 49; reference 20), to extend from the proximal to the distal end thereof
- c) a sheet of surgical material (column 4, line 66 - column 5, line 13) which can be folded, or collapsed, for location at and within the distal end of the deployment sleeve;
- d) an actuating means (column 5, line 33) operative to unfold or erect the sheet following expulsion from the distal end of the deployment sleeve through longitudinal movement of the plunger.

3 INDEPENDENT CLAIMS 13 AND 14

- 3.1 The present application does not meet the criteria of Article 33(1) PCT, because the

subject-matter of claim 13 is not new in the sense of Article 33(2) PCT.
Document D3 discloses both (the references in parenthesis applying to this document):

A sheet of surgical material (column 6, line 25) including ribs or radially extending formations (column 4, lines 23-25) which may be resiliently flexed and which, on restoration, extend the sheet from a folded, pleated or crumpled form, to a flat and self-supporting form (column 4, lines 48-56).

and

A sheet of surgical material (column 6, line 25) including radial ribs each rib being hinged (column 4, lines 23-25) to allow outer parts of the sheet to be folded inwards into a conical shape, the sheet being extended to a flat form by an actuating means (column 4, lines 33-40).

4 DEPENDENT CLAIMS 2-12 and 15

Starting from D1, dependent claims 2-9,11,12 and 15 do not seem to contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT).

- 4.1 Starting from D2, claim 10 is not regarded as being new (Article 33(2) PCT), as it discloses preformed folded creases (see column 4, lines 34-44) the device can further be covered or coated with a fabric or elastic material (see column 7, lines 55-58).

5 DEPENDENT CLAIMS 18-21

- 5.1 The subject-matter of claim 18 is not regarded as involving an inventive step for the following reason: D4 discloses a combination of a laparoscopic port (column 2, lines 57-67; reference 34) and an application assembly (column 2, lines 57-67; reference 32) for closing a percutaneous puncture formed by a trocar, wherein the deployment sleeve of the application is appropriately dimensioned to pass down the port (column

2, lines 59-61). It is further stated, that the trocar may be obviated so that the application assembly (deployment instrument), per se, can be inserted through the puncture (column 2, lines 63-67). Therefore, prompted by D4, it is obvious for a person skilled in the art to use a trocar in combination with the application assembly known from D1.

- 5.2 The subject-matter of claim 19 seems to be new and inventive (Article 33(2) and (3) PCT). The difference with respect to the prior art lies in that the deployment sleeve comprises an external flange. This enables the user to control the length of insertion of the sleeve in the port.
- 5.3 The subject-matter of claims 20 and 21 is not regarded as involving an inventive step (Article 33(3) PCT) (see D4).
- 6 Claims 1-15 seem to be industrially applicable (Article 33(4) PCT).

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18. A combination, for use in laparoscopic surgery, of a laparoscopic port and an application assembly in accordance with any of claims 1 to 12, wherein the deployment sleeve of the application assembly is appropriately dimensioned to pass down the port.
19. A combination in accordance with claim 18, wherein the deployment sleeve has an external flange, to control the length of insertion of the sleeve in the port.
20. A combination in accordance with claim 18 or claim 19, wherein the laparoscopic port has a nominal diameter of 5 to 10 mm.
21. A combination in accordance with any of claims 18 to 20, which additionally comprises instruments for the laparoscopic surgery.
22. Use of a laparoscopic port and an application assembly in accordance with any of claims 1 to 12, for the manufacture of a combination in accordance with any of claims 18 to 21, for use in laparoscopic surgery.